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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: EAC 01 225 52753 Office: VERMONT SERVICE CENTER Date: MAY 29 2002

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(3)

IN BEHALF OF PETITIONER: [redacted]

Public Copy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Helen E. Crawford for

Robert P. Wiemann, Director
Administrative Appeals Unit

DISCUSSION: The employment-based preference visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a nurse staffing agency. It seeks to employ the beneficiary permanently in the United States as a registered nurse. The petitioner asserts that the beneficiary qualifies for blanket labor certification pursuant to 20 C.F.R. 656.10, Schedule A, Group I. The director determined that the petitioner had not established that the beneficiary had passed the Commission on Graduates of Foreign Nursing Schools (CGFNS) Examination, or that she holds a full and unrestricted (permanent) license to practice nursing in the state of intended employment.

On appeal, counsel states that the beneficiary is still waiting for the results of the CGFNS examination.

Section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(3), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled or unskilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States. This section also provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

In this case, the petitioner has filed an Immigrant Petition for Alien Worker (Form I-140) for classification under section 203(b)(3)(A)(i) of the Act as a skilled worker (registered nurse). Aliens who will be employed as nurses are listed on Schedule A. Schedule A is the list of occupations set forth at 20 C.F.R. 656.10 with respect to which the Director of the United States Employment Service has determined that there are not sufficient United States workers who are able, willing, qualified and available, and that the employment of aliens in such occupations will not adversely affect the wages and working conditions of United States workers similarly employed.

An employer shall apply for a labor certification for a Schedule A occupation by filing an Application for Alien Employment Certification (Form ETA 750 at Part A) in duplicate with the appropriate Immigration and Naturalization Service office. The Application for Alien Employment Certification shall include:

> 1. Evidence of prearranged employment for the alien beneficiary by having an employer complete and sign the job offer description portion of the application form.

> 2. Evidence that notice of filing the Application for Alien Employment Certification was provided to the bargaining representative or the employer's employees as prescribed in 20 C.F.R. 656.20(g)(3).

In this case, Form I-140 was filed on May 2, 2001. On August 30, 2001, the director requested that the petitioner submit evidence that the beneficiary had passed the CGFNS Examination or that she held a full and unrestricted license to practice nursing in the state of intended employment.

In response, counsel submitted a letter from the petitioner, a copy of an article regarding nursing shortage, a copy of a contract between the petitioner and Manchester House, and a copy of a contract between the petitioner and the Delaware Department of Health and Social Services. Counsel stated that "the beneficiary is still waiting for her copy of the VisaScreen Certificate from the CGFNS."

On appeal, counsel states:

> We have been trying to obtain the CGFNS exam results for over 6 months without success. In part this delay is due to the CGFNS having difficulty processing the number of applicants it has been receiving. In part, it is due to the inability of the beneficiary's educational institution to issue documents to the CGFNS. The beneficiary has had similar difficulties registering for and taking the NCLEX nursing exam so that she may take the Delaware state nursing boards. In addition, most state nursing boards require the CGFNS of a foreign applicant. Therefore, the CGFNS is again at the heart of this delay. We understand that you must follow the federal regulations in these matters. However, if you are aware of a widespread problem with the CGFNS, then reasonableness would dictate a more understanding implementation of the regulations involved. This is known as Due Process.

Employment-based petitions are based on priority dates. The priority date is established when the petition is properly filed with the Service. 8 C.F.R. 204.5(d). The petition must be accompanied by the documents required by the particular section of the regulations under which submitted. 8 C.F.R. 103.2(b).

The petition was not accompanied by evidence that the beneficiary qualifies for classification pursuant to 20 C.F.R. 656.10, Schedule A, Group I, at the time the petition was filed. As the petitioner had not complied with the instructions stipulated in the Department of Labor regulations, at the time of filing of the petition, the petition may not be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden. The appeal will be dismissed.

ORDER: The appeal is dismissed.